REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
MANILA

BALANGA POWER PLANT
CO., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 979

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

x - - - - - - - - - - - x

D E C I S I O N

The petitioner is the grantee of six identical municipal franchises obtained from the municipal councils of Balanga, Orani, Orion, Abucay, Samal, and Pilar, all in the province of Bataan, by authority of Act No. 667 of the Philippine Commission for a uniform term of thirty-five years in each case. Under said franchises, petitioner is required to pay 1% of its annual gross earnings for the first twenty years and 2% for the remaining fifteen years. From October 1, 1953 to June 30, 1957, it did pay 2% of its gross earnings. On the other hand, respondent claims that petitioner is subject to the franchise tax of 5% of its gross earnings pursuant to Section 259 of the National Internal Revenue Code, as amended, and, consequently, assessed against it a deficiency franchise tax and surcharge in the sum of ₱26,253.04. Petitioner contested the assessment, and, upon denial thereof, filed the instant appeal.

The parties submitted a stipulation of facts, reading as follows:

x x x

1. That the Balanga Power Plant Co., Inc., the petitioner herein, is a Filipino corporation with offices at Balanga, Bataan, organized and existing under the laws of the Philippines (See attached certified true copy of the Articles of Incorporation, Annex "A"); and the respondent is the head of the Bureau of Internal Revenue;

2. That the petitioner is the grantee of six (6) municipal franchises to operate an electric power plant from the Municipal Councils of six municipalities in the Province of Bataan, and indicated below which include the date of the grant:

Balanga -------	November 5, 1928
Orion ---------	September 20, 1929
Abucay -------	July 16, 1930
Pilar --------	July 16, 1930
Orani --------	September 29, 1930
Samal --------	April 8, 1932

3. That the municipal franchises for Balanga and Samal were granted under the authority conferred by Act No. 667 of the Philippine Commission (See attached certified true copies of reconstituted municipal franchises for Balanga and Samal, Annexes "B" and "C", respectively);

4. That the rate of franchise tax fixed in the municipal franchises for Balanga and Samal is one per cent (1%) of the gross earnings of the petitioner for the first twenty years and two percent (2%) for the remaining fifteen (15) years and the pertinent provisions of the franchise are hereinbelow quoted:

> "x x x x x x x x x on consideration del privilegio que aqui se concede abonara termestramente a la Tesoraria Provincial de Balanga, el uno por ciento (1%) de los primeros viente años y el dos por ciento (2%) de los mismos ingresos durante los quince años restantes de la vigenia de este mismos privilegio."

5. That the original demand for the amount of ₱12,892.91 as deficiency franchise tax for the period from October 1, 1953 to June 30, 1957 was made on November 17, 1958 (See BIR rec. pp. 26 & 27).

This original assessment was amended and increased to ₱26,253.04 on the basis of the audit report of the General Auditing Office dated November 3, 1960 (See BIR rec. p. 65) payment of which was demanded on January 12, 1961 (See BIR rec. pp. 72-74);

6. That the tax demanded by the respondent upon the petitioner herein in the amount of ₱26,253.04 as deficiency franchise tax from October 1, 1953 to June 30, 1957, is made under the authority of the ruling laid down by the Supreme Court in the two related cases entitled "Hoa Hin Co., Inc. v. Saturnino David, and Silverio Blaquera v. Hoa Hin Co., Inc., G. R. No. L-9616 and L-11783 promulgated on May 25, 1959;

7. That the petitioner has already paid the amount of ₱14,228.57 covering the period from October 1, 1953 to June 30, 1957 on the basis of 2% franchise tax;

8. That the deficiency franchise tax, payment of which is demanded by respondent from the petitioner herein, covers only the difference in the rate of the franchise tax from two percent (2%) which is provided in the municipal franchises to five percent (5%) as provided by Section 259 of the National Internal Revenue Code;

9. That the only issue involved in the present case is whether the Balanga Power Plant Co., Inc. is subject to the 2% franchise tax prescribed by the municipal franchises or the 5% franchise tax prescribed by Section 259 of the Tax Code, as amended;

10. That the parties have agreed to present before this Honorable Court such other evidence as may be necessary or required to enable the Court to render a decision on this case. (See pages 28-30, C.T.A. records.)

The sole issue presented is whether petitioner, as alleged by it, is subject to a franchise tax of 2% of its gross earnings, as provided in its franchise, or to the franchise tax of 5% as provided in Section 259 of the Revenue Code, as amended, as contended by respondent.

The franchises of petitioner require it to pay a tax of 1% of its gross earnings for the first twenty years and 2% for the remaining fifteen years. Said franchises do not contain any provision to the effect that the payment of the franchise tax therein prescribed shall be "in lieu of all taxes of every name and nature." On the contrary, said franchises provide that "Los aqui concesionarios, sus sucesores o cesionarios pagaran por sus bienes muebles los mismos impuestos que exige o mas adelante exigiere la Ley a las demas personas."[1] This brings this case, to our mind, within the doctrine enunciated in Hoa Hin Co., Inc. v. David, G. R. Nos. L-9616 and L-11783, May 25, 1959, wherein it was held that the increased rate of franchise tax provided in Section 259 of the Revenue Code is applicable and not the tax provided in the franchise of the grantee. Any attempt to distinguish the instant case from the case of Hoa Hin Co., Inc. would be futile in view of the similarity of the facts in both cases as evidenced by the following excerpt from said decision:

> "While the then Philippine Commission fixed the yearly tax to be paid to the Government by the original grantee, his successors and assigns at the rate of 1/2 of 1% of the gross earnings derived from the operation of the slipway or marine railway, the grantor reserved its right to assess and collect other business or income tax on the grantee's business. Section 259 of the National Internal Revenue Code, as amended, provides that 'whichever is higher' between the rate imposed by the special charter of the grantee and the National Internal Revenue Code, shall apply

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[1]Condition No. 17, Resolution No. 63 of the Mun. Council of Balanga, Exh. B; Condition No. 18, Resolution No. 62 of the Mun. Council of Samal, Exh. C.

to and be imposed upon, and paid by, the grantee of the franchise. The rate imposed by section 259 of the National Internal Revenue Code, as amended, being higher than that imposed in the petitioner's charter, Act No. 1256, the petitioner has to pay the rate imposed by section 259 of the National Internal Revenue Code, as amended. The rule in Manila Railroad Company v. Rafferty, 40 Phil. 224; Philippine Railway Company v. Collector of Internal Revenue, G.R. No. L-3859, 25 March 1952; Visayan Electric Company v. David, 49 Off. Gaz. 1385; and Carcar Electric & Ice Plant v. Collector of Internal Revenue, 53 Off. Gaz. 1068, cannot be invoked by the petitioner, because in the grantee's respective franchises there is a provision that 'Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature -- municipal, provincial or central -- upon its capital stock, franchise, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise.' The petitioner's franchise, Act No. 1256, does not embody such exemption clause."

It is contended on behalf of petitioner that to apply to it the increased rate of tax provided in Section 259 of the Revenue Code would render said section unconstitutional and void because it would impair the obligation of contracts which is expressly prohibited by the Constitution. It is admitted that all the franchises of petitioner are subject to the reservation clause contained in Section 5 of Act No. 667, which provides:

"Every franchise granted hereunder shall contain a provision that it is granted subject to the power of Congress to alter, modify or repeal the same in accordance with the Act of Congress entitled 'An Act temporarily to provide for the administration of the affairs of civil government in the Philippines Islands, and for other purposes,' approved July first, nineteen hundred and two."

There can be no impairment of the obligation of contracts, within the meaning of the Constitution, where the grantee of a franchise accepted it subject to the right of the grantor to alter, modify or repeal the same, as in the instant case. The contention that Section 259 of the Revenue Code is unconstitutional and void as applied to petitioner, because it violates the constitutional provision which forbids the enactment of any law which shall impair the obligation of contracts, must be dismissed as untenable.

WHEREFORE, the decision appealed from is affirmed, with costs against petitioner.

SO ORDERED.

Manila, September 19, 1962.

ROMAN M. UMALI
Associate Judge

WE CONCUR:

MARIANO NABLE
Presiding Judge

AUGUSTO M. LUCIANO
Associate Judge